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BILLBOARDS AND ROADSIDE CONTROLS

by

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BILLBOARDS AND ROADSIDE CONTROLS

NEW STEAM has been put into an old controversy by the gigantic program of road construction authorized by Congress last year. It has to do with the use of land abutting the highways for advertising signs and commercial structures which may despoil the landscape, reduce traffic capacity of the roadway, and add to the hazards of driving.

The Federal Aid Highway Act of 1956 contemplates the completion within 13 years of a 41,000-mile network of unobstructed super-roads linking major population centers. Congress authorized federal appropriations of \$26 billion for the interstate system alone, designed to cover 90 per cent of the total construction cost, and an additional \$2.5 billion of federal aid for other roads.¹ Now the question is raised whether Congress put enough safeguards into the law to protect this vast public improvement against the deterioration brought on by roadside abuses.

IMPENDING STRUGGLE OVER FEDERAL REGULATION

The projected interstate system will be made up of expressways which can be entered only from specially constructed access roads. Application of the limited-access principle will prevent the cropping up of such commercial structures as usually border much-traveled roads. But business enterprises are likely to cluster as closely as possible to the access points, where they will be visible from the highway, and there is nothing in existing federal law to prevent owners of lands adjoining the highway from selling or leasing locations to advertisers for erection of billboards.

The interstate system comprises the most heavily traveled routes in the country; one-seventh of all traffic passes over them today and the percentage is likely to be much

¹ Motorized traffic in the United States operates on a total of 3,350,000 miles of roads and streets, of which 254,500 miles are in the federal-aid primary system (chiefly trunk roads linking residential, commercial, and industrial centers) and 483,000 miles in the federal-aid secondary system (farm-to-market roads). See "New Highways," *E.R.R.*, Vol. II 1964, p. 886.

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higher when improvement of the system is completed. Obviously, the adjoining land will offer the outdoor advertising industry some of the most prized locations in the nation.²

The basic issue now emerging is whether the federal government should regulate roadside uses on the interstate system or whether this function should remain entirely with the states and localities. Federal Highway Commissioner Bertram D. Tallamy told the Senate Public Works Committee shortly before taking office in February that in his previous post as director of the New York Thruway he strongly favored "regulation of outdoor advertising so it [the highway] would not develop into 'billboard alley,' as it surely would if uncontrolled." But he thought care should be taken lest federal action infringe on rights of the states.

The American Automobile Association, long a supporter of state-local regulation, took a stand for the first time on Feb. 20 in favor of federal measures to protect the interstate system. A.A.A. President Harry I. Kirk said that, in view of the very large amounts of federal tax money to be laid out, Congress would be fully justified in taking protective action: "Long and bitter experience has demonstrated that it is economically unsound to invest large sums in highway construction unless the roadsides are protected against blight that destroys a major part of the roads' capacity, safety, efficiency, and enjoyment."

The outdoor advertising industry has already instituted a vigorous campaign against proposed federal restrictions. Harley B. Markham, chairman of the Outdoor Advertising Association of America, presented the industry's views at a conference, Feb. 1, with top Commerce Department and Bureau of Public Roads officials. He said that prohibition of advertising by federal authority would be "economically unsound . . . an invasion of states' rights . . . [and] a misuse of federal funds."

Scott Lucas, former Democratic leader of the U.S. Senate, has been retained by the Roadside Business Association to represent its interests in the coming battle over federal regulation. The effort will be not only to prevent new

² "Outdoor advertising is purchased primarily . . . to expose a message at high traffic points" and "highway changes . . . will affect the flow of traffic and . . . make necessary the relocation of panels." Association of National Advertisers, Inc., *Essentials of Outdoor Advertising* (1962), pp. 22, 49.

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legislation banning billboards, but also to remove existing restrictions on operation of commercial establishments near the interstate highways.

Outdoor advertisers sometimes ridicule advocates of strong billboard controls as "aesthetes" and "idealists," but not all of them can be strictly so classified. In addition to civic-betterment groups, "Keep Our State Beautiful" committees, conservationists, garden clubs, wildlife and ornithological societies, they include professional planners of land uses who oppose the so-called "ribbon development" of vending and service establishments along the highways. In several states, interested citizens have joined together in Roadside Councils to promote appropriate regulatory action by the federal and state governments.

PROPOSALS FOR FEDERAL BILLBOARD LEGISLATION

Much of the current debate on roadside uses was generated by an article by Robert Moses, chief of the New York City and state park systems, in the December 1956 number of *Harper's*. Moses asserted that while "we finally have got a fairly good federal highway law," standards established by that statute did not give adequate protection against roadside abuses.

Even the express arteries, with limited access and infrequent entrances . . . are all left exposed to an indiscriminate mushroom growth of ugly filling stations, hotdog stands and all the other familiar roadside eyesores. Consequently we face the prospect of speedways built in gasoline gullies, obliterating scenery and confined between continuous rows of offensive advertising. . . . If the billions of public investment . . . are to be protected and the value of our scenery and natural assets is to be preserved, steps to prevent the onslaught of commercial advertising must be taken before construction gets under way.³

Moses on Feb. 8 forwarded a set of proposals for strengthening the highway act to members of Congress. His amendments would proclaim a public policy "to preserve the natural scenic beauty of the interstate system" and would spell out statutory standards restricting commercial signboards to a distance beyond 500 feet from the nearest edge of the highway. In an accompanying letter, Moses wrote: "We feel strongly that prohibition against billboard advertising signs adjacent to the interstate highway system is a matter for federal rather than local regu-

³ Robert Moses, "The New Superhighways: Blessing or Blight?", *Harper's Magazine*, December 1956, p. 27.

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lation." Billboards along the right-of-way, "by distracting drivers and depriving travelers of an uninterrupted view of the countryside, nullify major objectives of the program, as well as detract from the appearance of the improvements themselves."⁴

Sen. Richard L. Neuberger (D-Ore.) in late January proposed an amendment which would direct the Secretary of Commerce to promulgate a set of standards for the interstate system identical with the standards suggested by Moses. While the states would not be obliged to accept the proposed standards, any state that did so would be reimbursed for 90 per cent of the cost of buying up advertising rights along the proposed 500-foot strips.⁵ Similar amendments have been offered in the House by Reps. Clifford Davis (D-Tenn.) and Stuyvesant Wainwright (R-N.Y.). The strongest bill in the hopper is one by Rep. Robert Hale (R-Me.) which would deny federal highway funds to any state failing to outlaw advertising within 600 feet of each side of the road.

Billboard controls were carried in an early version of the highway legislation finally enacted in June 1956. That measure, favorably reported by the Senate Public Works Committee in May 1955, would have authorized the Secretary of Commerce, on request of any state, to acquire exclusive advertising rights for a maximum distance of 500 feet from the road when acquiring rights-of-way. These rights were to be turned over to the state for use in administering billboard regulations.

On the floor of the Senate, Sen. Walter F. George (D-Ga.) condemned the committee's proposal as unwarranted federal intervention in an area of state authority. He said it would permit federal acquisition of a strip of land 1,200 feet wide "right through the heart of the state." The controversial provision was dropped when it seemed to endanger passage of the highway bill and was not brought up again in the 1956 debates which culminated in adoption of the present highway act.

⁴ The only signs permissible under the proposed amendments would be necessary directions, official notices, signs offering property on which they are located for sale or lease, and advertising signs in commercial areas which refer only to business conducted on the premises.

⁵ Neuberger acknowledged in a letter to the *New York Times*, Feb. 25, that his bill was not the strongest that could be written but said experience had convinced him and other senators interested in billboard control that "any stronger proposal in the federal sphere might merely play into the hands of the signboard lobby."

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PRESENT FEDERAL STANDARDS FOR INTERSTATE SYSTEM

The new highway law provides several means by which uses of land abutting the interstate system may be influenced or controlled, directly or indirectly, now or in the future. It specifically states that all agreements between the Secretary of Commerce and state highway departments for construction of interstate projects "shall contain a clause providing that the state will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the interstate system." Another clause must provide that "the state will not add any points of access to, or exit from, . . . such project without the prior approval of the Secretary."

If a state has difficulty in acquiring land, or interests in land for the right-of-way or for access routes, the Secretary of Commerce may take possession of the needed land, through condemnation proceedings. The land can then be deeded to the state for highway use, except that the federal government will hold title to the outside five feet of any right-of-way unless or until the state adopts legislation to maintain control of access.

The Secretary was directed, in cooperation with state highway departments, to formulate "construction standards . . . adequate to accommodate the types and volumes of traffic forecast for 1975" which would be applied uniformly throughout the country. Within a few weeks after the act reached the statute books, on June 29, the Department of Commerce and the American Association of State Highway Officials agreed on a set of design standards which became immediately effective. While primarily concerned with engineering specifications, the standards contain general statements of policy under which objectionable roadside developments might be restrained. They state:

The national system of interstate and defense highways . . . must be designed in keeping with their importance as the backbone of the nation's highway systems. To this end they must be designed with control of access to insure their safety, permanence and utility, and with flexibility to provide for possible future expansion. . . . Divided highways should be designed as two separate one-way roads to take advantage of terrain and other conditions for safe and relaxed driving, economy, and pleasing appearance. All known features of safety and utility should be incorporated in each design to result in a national system . . . which will be a credit to the nation.

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The Bureau of Public Roads is now engaged in a study, ordered by the highway act, of factors bearing on the safety of highways, including the effects of various roadside features. The bureau is to report to Congress on "any direct or indirect benefits accruing to any class [other than direct road-users] which are attributable to public expenditures for such highways."

Stature of Outdoor Advertising Industry

MODERN BILLBOARD ADVERTISING is essentially a phenomenon of the motor age, but its beginnings can be traced back to remote periods of history. The merchants of ancient Rome, and the promoters of gladiatorial contests, posted notices along public thoroughfares. After movable type came into use in the 15th century, the printed poster was widely employed as an advertising medium. Church walls were a favorite place for advertising sundry products—from prayer books to sickness remedies.

Improvement of the lithographic process in the late 18th century brought the illustrated poster still in use by billboard advertisers. The pictorial sheets were at first pasted indiscriminately on trees, fences, or buildings wherever passersby were numerous. Advertisers did not scruple to cover competitors' placards with their own. In an effort to guarantee continuity of showing, advertisers began to seek permission of property owners for exclusive use of their premises. Eventually they turned to renting or buying land on which to erect their own structures for placement of posters.

At first the poster frames were roughly fashioned from unfinished lumber. Advertisers cared little about the esthetics of their displays and many posters remained on view until they weathered away. By the latter part of the 19th century, however, billposting companies in the United States were beginning to band together—principally to protect their properties against depredations*—and with

*The first outdoor advertising trade organization in the United States, the International Bill Posters' Association, was formed in St. Louis in 1872 for the express purpose of preventing "the malicious covering of bills to gratify private animosity of opposing billposters." It vowed to "use all legal means to bring billposters guilty of same to justice."

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organization came adoption of structural, esthetic, and maintenance standards.

DEVELOPMENT OF OUTDOOR DISPLAY TECHNIQUES

The Associated Bill Posters and Distributors of the United States and Canada, an organization formed by merging several trade groups, introduced in 1910 the modern practice of marketing "showings," that is, selling space in a sufficient number of specific locations to provide maximum exposure of an advertisement in a particular area.⁷ Assuring advertisers of standardized locations greatly stimulated the use of billboards, while growing use of the automobile brought such opportunities as outdoor advertising had never enjoyed before. An industry publication notes that the automobile, "coupled with the gradual development of a network of fine roads," broadened use of outdoor advertising "far beyond the wildest dreams of the organizers of the industry."⁸

A new organization, Outdoor Advertising Incorporated, was set up in 1931 to promote use of billboards on a national scale and from that year on modern techniques of advertising were applied intensively in the outdoor field. O.A.I., which represents a majority of the "plant owners," serves as national sales representative for the industry, maintaining branch offices in a dozen large cities. It helps member agencies plan wide-area advertising campaigns, develops cost and space estimates for any market, even produces copy and designs for prospective advertising accounts.

The Traffic Audit Bureau was created by the industry in 1933 to conduct a program of "locating, tapping, refining, and furnishing to advertisers authenticated outdoor advertising circulation data." It sponsors technical evaluations of the effectiveness of various billboard techniques, studies changing traffic patterns, and measures the "circulation and space position value" of billboard locations. The Standard Group of Advertising Companies was formed in 1945 to sponsor an advertising campaign in the trade press for greater use of billboards. The industry is served also

⁷ An advertiser who today buys a so-called "No. 100 showing" is assured that his poster will be placed in a sufficient number of locations to be seen by virtually everyone who moves about the area during a 30-day period. In a large city, a No. 100 showing may require as many as 100 billboard displays. Showings of smaller denominations are sold for more limited coverage.

⁸ Association of National Advertisers, *Essentials of Outdoor Advertising* (1952), p. 25.

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by the National Outdoor Advertising Bureau, Inc., which provides a field service for inspecting billboards and keeping members advised on statistical data and regulatory developments which affect their interests.

The refinement of marketing techniques both reflected and stimulated growth of the outdoor advertising business. Expenditures for billboard displays have increased six-fold over the past 20 years; the annual outlay for this form of promotion now exceeds \$120 million. Major operators in the organized industry own approximately 350,000 billboards in 14,000 market areas. Approximately 700 advertisers regularly purchase billboard space on a national or regional basis.⁹ Thousands of additional business concerns put up their own posters independently.

The medium is particularly favored for promoting sales of goods and services needed by motorists—from gasoline and tires to motels and restaurants. Producers of brand-name products find outdoor displays particularly effective in impressing images of their packaged goods on the public mind. New advances in the lithographic art, which afford highly realistic illustrations in color, have been credited with largely increasing sales for food distributors, whose posters carry mouth-watering pictures of edibles in mammoth size.

Not all billboard displays class as commercial advertising. The industry regularly devotes space to philanthropic and civic causes, such as Red Cross, Religion in American Life, and March of Dimes campaigns. It co-operates with governmental agencies in promoting enlistment in the military services, sale of savings bonds, and safe driving. The Outdoor Advertising Association estimates that during 1955 its members' contributions, in terms of billboard space value, totaled more than \$2 million and resulted in some 15 billion "estimated advertising impressions."

SELF-IMPOSED LIMITATIONS ON SIZE OF BILLBOARDS

As motor traffic multiplied and moved at greater speed, billboards became larger and their displays more spectac-

⁹ The top eight billboard advertisers of 1955 were General Motors, which spent \$10.2 million during the year for billboard advertising; Ford Motor Co., \$6.6 million; Distillers Corp.-Seagram, \$3.6 million; Schlitz Brewing Co., \$3.4 million; Coca-Cola, \$3.2 million; Shell Oil, \$2.4 million; Schenley Industries, \$2.5 million, and General Foods, \$1.8 million.—Printer's Ink, *Advertisers' Guide to Marketing for 1957*, pp. 296-298.

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ular. The most widely used form today is the 24-sheet poster, consisting of lithographed sections which, when put together, measure 19' 6" by 8' 8". The poster is pasted up on a structural frame standardized at 25' by 12'. In congested urban areas, a narrower three-sheet frame, standing 8' high and 4' 10" wide, may be used.

Approximately 20 per cent of the outdoor advertising outlay is for the more expensive "painted board" which usually is kept on view for at least four months instead of the customary 30-day showing for posters. The Outdoor Advertising Association recommends several standard forms of the painted board: the Streamliner, 50'-60' wide and 15' high, and the Standard City and Suburban Bulletin, 47' x 12' 6", both of which are considered good for "unusual three-dimensional or action effects." A third type, which may measure up to 72' x 18', is suggested for placement "along heavily traveled highways and railroad right-of-ways."

The painted board lends itself to striking visual effects. In trade parlance, a "spectacular" is a large sign "individualized with lighting and action effects." The "semi-spectacular" is a painted board to which have been added neon lights, three-dimensional devices, reflector material, or a type of fluorescent paint which, together with special lighting, creates an effect known as "black light."¹⁰

Like all forms of advertising, billboard displays are designed to be seen and to make a striking impression on the largest possible number of persons. But outdoor advertising must be accommodated to the functions of its setting—the highway—and to that end the organized industry has developed a number of principles over the years, some of which tend to restrain the proliferation of billboards.

The Outdoor Advertising Association's "statement of policy" says that billboards should be displayed "in such manner as to recognize and respect the public interest in natural scenic beauty, parks, historical monuments, and shrines." They should be distributed "with discretion and good taste with respect to frequency and location," and they should be constructed and maintained in conformity with technical standards based on those of the American Standards Association, the Building Officials Conference,

¹⁰ *Essentials of Outdoor Advertising* (1952), pp. 42-45.

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and similar organizations. Billboards should be erected only in areas zoned for business, commercial or industrial use; if put up in unzoned areas, operators should place them "as if reasonable zoning existed . . . consistent with existing land use and the character of surroundings." The standards further call for honesty in advertising and active support of civic, educational, charitable, religious, and government promotional campaigns. The industry is particularly pleased to report that the National Safety Council asks, and receives, billboard space to put across its message.

OBJECTIONS TO BILLBOARDS: ESTHETICS AND SAFETY

Steady improvement in the appearance of billboards and the industry's public relations activities tended to mitigate the hostility widely felt in earlier years, but with the development of motor expressways outdoor advertising again came under wide attack. Chief objections to billboards have been that they obstruct the view of the countryside and constitute traffic hazards. The additional point is sometimes made that they depress real estate values, particularly in areas depending on tourist and resort trade.

The outdoor advertising industry asserts that the signboards that give offense are erected by independent operators of roadside businesses; that the organized industry's principles of placement, design, and upkeep protect against spoilation of scenery. Many billboards, together with landscaped areas at their base, are described as being more attractive than the unkempt fields, straggly fences, and ramshackle shops that line long stretches of rural highways. The esthetics of this question are largely subjective; a picturesque scene to one observer may be an untidy field to another, and a billboard may be a delight or an eyesore depending on the beholder.

The actual effects of signboards on highway safety are not easy to determine. The complexity of accident causation makes it difficult to isolate the effect of one factor, and the tendency for advertising signs to appear in greatest number near access points, intersections and curves, where hazards are greatest, obscures the role of the billboard as a contributing factor.

A study of accidents occurring over a stretch of Minnesota roadways in 1948-1949 showed that "road sections whose

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margins were populated with commercial activities had relatively high accident rates . . . between two or three times the rate found on sections having no commercial development." And intersections with four or more billboards had "an average accident rate approximately three times that for intersections having no signs."¹¹ A similar study in Iowa disclosed higher accident rates, with more accidents due to inattention, on road stretches lined with business and advertising structures than elsewhere.¹²

On the other hand, a study undertaken by the Driving Research Laboratory of Iowa State College at the request of the Outdoor Advertising Association came to the conclusion that "Numerous signs in the driver's field of vision in no way influenced efficiency at the wheel adversely, and in fact seemed slightly beneficial . . . about 10 per cent in favor of conditions with signs." A field test by the Michigan Highway Department produced similar findings. A joint paper by directors of these two studies—one in the laboratory, the other along 100 miles of actual highway—said that "no significant relationship . . . between outdoor advertising signs and highway accidents" had been shown, and that "the evidence, if any, is slightly in favor of having something along the highway to arouse the motorist and keep him alerted."¹³

The billboard industry makes extensive use of these studies to support its thesis that drivers on high-speed roads are less likely to be afflicted with "highway hypnosis" if billboards are there to "snap the driver back to full attention and awareness."¹⁴ But enemies of the billboards are far from convinced. In a statement released by the Pennsylvania Roadside Council in December 1955, Robert Moses said: "The argument that roadside billboards do not contribute to highway accidents leaves me completely cold. . . . Billboards are designed to attract the attention of the passing motorist. If they fail in this they are of no value to the advertisers."

¹¹O. L. Kipp, paper published in *Highway Research Board Bulletin* 55 (1952), p. 37.

¹²W. A. Rusch, "Highway Accident Rates as Related to Roadside Business and Advertising," *Highway Research Board Bulletin* 30 (1951), p. 49.

¹³A. B. Lauer and J. Carl McMonagle, "Do Road Signs Affect Accidents?" *Traffic Quarterly*, July 1955, p. 329.

¹⁴Advertisements carrying this theme were placed early this year in the *Wall Street Journal*, *Petroleum Week*, and the *General Federation Clubwoman* by the General Outdoor Advertising Co.

Regulation of Lands Bordering Highways

REGULATION of roadsides by public authorities is almost as old as the roads themselves. The Statute of Winchester, signed by Edward I of England in 1285, directed lords whose lands bordered on market roads to set their parks back at least 200 feet and remove bushes and small trees that might afford concealment for highwaymen.

English highway law later required roadside land owners to scour ditches for road drainage, to clip hedges or lop off tree tops, and to permit highway supervisors to enter private property and take materials for road repair. Nineteenth century statutes required 25-yard setbacks for unscreened steam engines, gins and kilns; 50-yard setbacks for burning bricks or coke; 20-yard setbacks for windmills.¹⁶

Much early legislation in the United States followed English patterns. A Pennsylvania act of 1802 authorized highway officials to enter private land near roadways. Massachusetts and South Carolina statutes empowered road commissioners to cut trees on abutting land. Other early laws permitted removal of sand and gravel from land adjoining roads without permission of the owner.

Modern roadside regulations are the outgrowth of a maze of state laws, administrative regulations, and court decisions which attempted, in the main, to strike a balance between protection of private property rights and the power of the state to restrict those rights in the interests of public health, safety, and convenience. But a law professor commented, after surveying historical precedents for roadside control, that law-makers and public officials had tended to overlook the fact that roadside owners have legal obligations as well as legal rights.

[The] seemingly forgotten historical fact is that judges as well as legislators have for centuries used the sovereign power of the state . . . to impose duties upon abutting landowners so that the people may have ready and easy passage on the highway. . . . We have here some rusting tools which can at least in extreme cases of roadside abuse be fitted and polished to modern needs. . . .

The real question is not whether the abutter owes duties. . . . It is the extent and nature of those duties in the middle of our

¹⁶ J. H. Beuscher, "Roadside Protection Through Nuisance and Property Law," *Highway Research Board Bulletin* 118 (1955), p. 66.

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century. We have never related this age-old principle with specificity to the high-speed facts of mid-20th century travel. Today the principle . . . may no longer require the scouring of ditches . . . but it may demand the setting back of structures to improve sight distance.¹⁶

Regulation of roadside uses meets few obstacles in the courts when it can be shown that certain structures endanger the safety of travelers or interfere with efficient use of the roadway. When it comes to ordering removal of structures for purely esthetic reasons, use of regulatory police power is on less firm ground. In recent years, however, with the development of controlled-access expressways and parkways, regulation for esthetic purposes has been greatly extended. This trend dates from a 1936 decision of the Massachusetts supreme court¹⁷ upholding a billboard control law which stated that "Grandeur and beauty of scenery contribute highly important factors to the public welfare" and that "to preserve such landscape from defacement promotes the public welfare." The court held that regulation of billboards, without regard to their effects on safety or convenience of travelers, was permissible solely for "the preservation of scenic beauty and places of historical interest."

MULTIPLICITY OF STATE LAWS AND REGULATIONS

The highway laws of approximately two-thirds of the states subject roadside developments, including billboards, to public control. The tendency has been to regulate, rather than to ban, billboards except along stretches of highway passing through areas noted for their scenic beauty or historic interest. Alaska is unique in having banned all advertising from its highways by act of the territorial legislature in 1949; four years later the Alaska Highway Patrol was authorized to remove all billboards and charge the cost of removal to owners or erectors.

Six states forbid erection of billboards within certain distances of the traveled portion of rights-of-way—usually 300 feet, sometimes 500 feet. Some dozen prescribe clearance distances from churches, schools, playgrounds, public buildings, parks, forests, reservations, and cemeteries. A number of states fix maximum dimensions for billboards and ban them near intersections or along highway curves.

¹⁶ *Ibid.*, p. 67.

¹⁷ *General Outdoor Advertising Co. v. (Massachusetts) Department of Public Works.*

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Seven states prohibit use of moving parts or intermittent illumination on billboards; in 15 states use of advertising signs that resemble official traffic signals is banned. At least nine states license billboard companies and 15 require permits for erection of roadside signs. The variety and minuteness of detail in existing roadside law indicates that many legislators feel that "the problem can not be easily controlled and uniformly regulated by the general authority granted public officials."¹⁸ Billboard control legislation of a sweeping nature usually meets opposition from business groups whose economic interests may be threatened. The Maryland legislature, for example, has had outdoor advertising control bills before it without action for a dozen years. At the current session, a bi-partisan bill to forbid erection of billboards within 500 feet of highways was withdrawn when one of its sponsors said: "It would have put outdoor advertising out of business . . . it wouldn't have a chance of passing."¹⁹

State courts frequently take exception to grants of broad powers to highway officials. The Ohio supreme court in 1954 denied authority to the state's Turnpike Commission, when acquiring property for rights-of-way, to appropriate the right of the land owners to erect billboards on remaining property. It held that while elimination of billboards might be desirable, they could not be banned without specific legislative authority.

Much roadside regulation rests on municipal or county ordinances adopted under enabling powers granted by the state. Many authorities believe that more extensive use of zoning powers by the communities, or development of statewide zoning plans, would supply the best answer to the problem of keeping billboards away from non-commercial areas.

Local governing bodies usually give careful consideration to the interests affected before putting new regulations into force. San Francisco made an extensive study of the effects of animated and so-called changing-message signs on traffic safety when framing rules to govern their operation. A timing frequency was sought which would be neither so short as to distract motorists nor so long

¹⁸ Eno Foundation for Highway Traffic Control, *Zoning and Traffic* (1952), p. 128.

¹⁹ The measure was reintroduced on Feb. 19 by nine Democratic delegates. It is backed by Republican Gov. Theodore R. McKeldin and the State Roads Commission.

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as to hold their attention while waiting for the sign's message to change. Official policy was "to realistically arrive at certain limiting features which . . . will permit motion or change in its milder form, which the advertising industry feels is a necessary tool of their trade."²⁰

LIMITED-ACCESS PRINCIPLE ON HIGH-SPEED ROADS

Regulation of developments along the newer expressways presents fewer difficulties than imposing modern standards on older roads where commercial establishments have long been in operation. The expressway system is designed specifically to serve high-speed, through traffic rather than the adjoining territory, and broader powers are customarily granted expressway authorities.

The first general expressway law was adopted by Rhode Island in 1937. The essential feature of such laws is a grant of power to take away from the owner of adjacent land the right of immediate access to the highway. During the last 20 years the highway officials of all states have been given authority to limit access to expressways and other through roads.

The expressway, which may be entered or left only from widely-spaced access roads, is necessarily insulated from adjoining land, and therefore offers little incentive to set up restaurants or other establishments to serve the motoring public. The laws of only a dozen states make provision for establishment of such facilities along expressways and Massachusetts is the only state in which they are operated entirely under highway department control, with income going into the highway fund. Four states authorize their highway departments to build access roads within the right-of-way on controlled-access highways so that private operators may establish needed service facilities.

NEED FOR MOTORIST SERVICES ALONG EXPRESSWAYS

Question is now being raised whether Congress gave adequate consideration to the needs of the motoring public when adopting provisions to preserve the expressway character of the interstate system. "We have concentrated on getting the highway user from one point to another," said an Ohio highway official, "but have we given sufficient thought to . . . the necessary services [fuel, automotive

²⁰ Ross T. Shoaf, "Are Advertising Signs Near Freeways Traffic Hazards?" *Traffic Engineering*, November 1955, p. 73.

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repair, food, rest rooms] which will assure his getting from the one point to the other without inconvenience and delay?"²¹

According to Sen. Dennis Chavez (D-N.M.), chairman of the Senate Public Works Committee, the purpose of the highway act's ban on commercial uses of the right-of-way was to "prevent the creation of monopoly" by barring private enterprise on state-owned land, thus allowing free competition to operate on nearby private land. "It was not the intent of Congress to leave a wake of economic devastation on either side of these new highways by wiping out roadside enterprises."²²

It has been pointed out that the average motorist resists turning off a high-speed road, even when trouble is brewing, because he always hopes there may be a gas station just over the hill. States operating limited-access expressways have had some experience with problems that arise when cars break down and motorists run out of gas. Massachusetts amended its expressway law to permit abutting service facilities after "the highway department suddenly found itself doing a brisk business, gratis of course, to motorists who ran out of fuel, suffered mechanical failures or experienced tire trouble." Pennsylvania, New York, New Jersey, and Connecticut provide for service areas, including restaurants, at specified intervals along express highways, and measures to permit similar rest stops are now pending before other legislatures.

The question of how close to the highway such facilities may be placed is of prime importance to the businesses involved, because many of them anticipate a sharp drop in trade at their present locations when new stretches of highway are opened. The motor fuel industry, with 200,000 retail outlets, is putting up a fight before state highway departments for the privilege of operating service stations which are "reasonably frequent and reasonably handy," with free competition among competing brands.

A policy statement of the American Petroleum Institute says that while "control of access to some highways may

²¹ Floyd J. Felty, address before American Association of State Highway Officials, Atlantic City, November 1964.

²² Address by Chavez before New Mexico Petroleum Industries Committee convention, Sept. 16, 1964.

Billboards and Roadside Controls

be warranted in the public interest . . . the fundamental right of businessmen to serve the motoring public competitively, as well as the right of highway users to have a selection of goods and services, should be preserved." The Institute recommends three possible road plans which, in its view, would provide convenience of motorist service with minimum reduction of highway efficiency: 1) Construction of an intersecting "feeder" road to the highway, flanked by private property on which service facilities could be erected at right angles to the highway; 2) access to a short road several hundred feet in length which would run parallel to the highway and abut on private land where the facilities could be provided; 3) a diamond plan to permit location of service facilities on private property adjacent to the turnoff and entrance lanes to the expressway.

Opponents of billboard advertising maintain that if developments such as those recommended by the petroleum industry are permitted, pressure for authorization of signs to tell the motorist that a service area is ahead—and what specific products can be purchased—will certainly follow. A spokesman for the industry told a recent meeting of state highway officials that the highly competitive nature of his business and the importance of brand names in attracting customers would make such signboards necessary.

No matter how much we spend to improve our product and to advertise it and to step up our service and to keep spic and span restrooms and all the rest, none of these things are going to be visible to a potential customer wheeling along at 60 miles an hour. Unless he can see at a glance that a particular brand . . . is available, we're mighty apt to lose our best customers.²³

While the speaker recognized that "you can't have a jungle of signs at every turn-off," he hoped the highway authorities could "work out a system which would let us get our names up and which wouldn't be objectionable from your standpoint."

²³ C. Z. Hardwick, address before Committee on Traffic at American Association of State Highway Officials convention, Atlantic City, Nov. 30, 1956.



